UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.

f/k/a General Motors Corporation, et al.,

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 6, 2010

2:33 PM

B E F O R E:

HON. ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

HEARING re Second Fee Application - Oral Decision

HEARING re Objection to Authorize the Extended Retention and Employment of the Stuart Maue Firm as Consultant to the Fee Examiner - Oral Decision

Transcribed by: Sara Bernstein

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P R O C E E D I N G S

THE COURT: Good afternoon. This is Robert Gerber. Do I have one or more of the lawyers for the debtors for Weil?

(No audible response)

Hello?

(No audible response)

Do I have anybody here on behalf of Weil?

(No audible response)

Do I have anybody here on behalf of Kramer Levin?

(No audible response)

COURT CALL OPERATOR: Your Honor, we do have Robert Schmidt from Kramer Levin.

THE COURT: Okay. Do I have anybody here on behalf of Weil?

MR. SMOLINSKY: Yes, Your Honor, it's Steve Karotkin and Joe Smolinsky.

THE COURT: Okay. For the Butzel Long firm?

(No audible response)

No, all right. Fee examiner, Ms. Stadler?

MS. STADLER: We --

THE COURT: I beg your pardon?

MS. STADLER: Also attorney Eric Wilson, another -- the fee examiner's attorney.

THE COURT: Okay and a rep of the U.S. trustee's office?

(No audible response)

All right. Mr. Karotkin, I'd appreciate it if you would, in due course, order a transcript of this and provide it to folks who weighed in on the fee application issues who aren't on the call today.

Ladies and gentlemen, in the Chapter 11 cases of Motors Liquidation Corporation, formerly known as General Motors and affiliates, I have four remaining contested matters before me, the remainder, having been consensually resolved or easily ruled on, relating to the fee examiner's objections to the three fee applications of Weil Gotshal, Kramer Levin, Butzel Long and objections to the fee examiner's motion to extend the retention of his fees statistical consultant, Maue.

On these motions and applications, the fee examiner's objections are sustained in part and overruled in part. And the Maue firm's retention will be extended for one more fee period, with the need for its further continuation to be reviewed after that time, but with the species of rebuttable presumption that by that time, the need for Maue's services will have come to an end. The specifics of my rulings and the bases for the exercise of my discretion in connection with these matters follow.

Turning first to the application by Weil, the principal issue, accounting for nearly ninety percent of the recommended fee adjustments, is the extent to which Weil can

recover for time "entries, for time spent in connection with the preparation of fee statements and fee applications". That's Weil reply at 2 which is, as a practical matter, means the cost of reviewing time entries "for compliance with" or "pursuant to" the U.S. trustee guidelines. See fee examiner objection at 7. Issues here exist with respect to the underlying conceptual issue as to the extent to which that is compensable and to the extent it is, whether any Weil time spent on that task was excessive. The fee examiner recommends that fifty percent -- five - zero percent -- reduction in the compensation for that activity. All parties agree with the general principle that I noted in my tentative ruling that after it's associated with the fee application process that are required by bankruptcy law and rules are compensable and those that would be done for any client, including clients in a non-bankruptcy context, are not. See, for example, CF&I 131 B.R. at 482 to 489.

The devil is in the details and this is the first of the "head-scratchers" that we identified in oral argument because the services in question here are in the grey zone between the two extremes. As relevant here for Weil and also to the other two firms whose applications I have before me today, there are time-checking services being done by the same person, at the same time, that in material part, serve both non-bankruptcy needs and special needs unique to bankruptcy

cases. Though it wasn't expressly stated, I think we all agree that this is another matter of first impression. While there are decisions from other courts dealing with the broad parameters and what I'll call the easy circumstances, certainly, no applicable statutory language or case law authority has been cited to me that answers the question I now need to address. And after about ten years on the bench and thirty-seven years doing bankruptcy work generally, I'm aware of none. So I decide the matter based on my knowledge and experience with bankruptcy and the practice of law generally, issuing what's ultimately a discretionary ruling grounded in those years of experience and in implementing bankruptcy policy.

At the outer extremes, the decision is easy. Drafting the narrative that is part of any fee app and preparation of the application itself and tables and proposed orders that accompany the application or follow it are activities that are unique to the bankruptcy process and are plainly compensable. We have a fair body of law saying that.

On the other hand, preparing timesheets in the first instance and preparing a bill for the client are services that are required for any client, bankruptcy or non-bankruptcy, and are plainly not compensable. We have a fair body of law saying that as well.

But we're left with the services in the middle, most

significantly, the cost for checking time entries, following up to investigate and correct apparent errors or failures to provide the requisite detail and to screen for privileged or otherwise confidential matter.

Weil makes three major points stating that purposes of the timesheet checking include ensuring that the time entries comply with applicable rules and guidelines, comply with earlier rulings on the part of the judge in the case, like those I issued back on April 29 and help avoid the disclosure of matter covered under the attorney/client privilege. Weil further argues that these needs are unique to bankruptcy and aren't applicable to the typical non-bankruptcy client.

I agree with Weil in several of these respects, though not wholly. And I also believe, as I'll note momentarily, that there are relevant factors as well. Weil's privilege point is well-taken. In the typical non-bankruptcy situation in which a law firm bills its client, no privilege screening is necessary because there are no privilege concerns when the privileged communication is disclosed solely to the client which owns the privilege itself. But in bankruptcy, time records are available to the public. Also, a matter may not technically be privileged but may, nevertheless, be confidential so that public disclosure is damaging to the estate.

How best to deal with privileged matter in a fee app context is a matter upon which reasonable people and judges can

differ. And in fact, my views on this have evolved on this subject over the years and indeed, in recent weeks. Options include making time entries in detail but then keeping the application under seal, doing the same but redacting sensitive time entries, which until recently, was my preference, allowing the redacted time entries to be exposed to a public file and finally, although there may be other options that didn't occur me, permitting sensitive time entries to be in lesser detail, eliminating or reducing the need for and resulting expense of redactions or further measures.

I think that depending on the facts of a particular case, any of the three approaches, if utilized by counsel, would be reasonable unless and until the judge orders otherwise. The idea after all, is to get more money into the pockets of creditors and to keep administrative expenses down. Since the cost of the review and redaction process must be borne by the estate, I think it's at least appropriate to consider whether the third option best serves creditors' needs, since in the relatively few cases where the difference in detail matters, we can devise ways to provide the U.S. Trustee a fee examiner or fee committee, or a reviewing judge with supplemental detail to provide the necessary comfort that the estate's money has been satisfactorily spent.

Thus, after some thought to the matter, I concluded that on balance, it isn't necessary in all cases that time

entries be detailed to the point of revealing arguably privileged matter when the time entries go public, because if they were that detailed, redaction would be essential and the costs of reviewing and redacting the time entries for privilege could, in many if not most cases, exceed the incremental benefits of the greater detail.

But people didn't know my thinking on this before this ruling and understandably made their time entries in detail that would reveal confidential and privilege matter. When, as here, the time entries are that detailed or some of them are, that makes review of the time entries to redact for privileged matter essential and review of the time sheets to screen for privileged matter therefore must be compensable.

While it's also correct that firms should ensure that their timekeeping practice keep up with refinements in the law, as evidenced most obviously by rulings by the judge on any earlier fee apps. It's at least appropriate if not also essential that firms submitting fee apps ensure that they're consistent with any ruling issued earlier in the case that may determine what's compensable or reimbursable or not, and what levels of detail or other formality are required as part of the data underlying the fee application. While we all agree, of course, that for the time period at issue here, October 2009 through January 2010, there was no occasion to check for compliance with my earlier rulings which were issued only on

April 29, my rulings now must also address circumstances that are foreseeable and will come up in the future in this case. And while this factor isn't relevant now, it will be relevant just a few months from now.

The third factor requiring screening for timekeeping compliance with applicable bankruptcy rules and guidelines requires a more nuanced analysis. Outside of bankruptcy, lawyers needn't record their time in tenth of an hour increments, record their time in the detail we require, avoid bunching their time entries or otherwise comply with the more rigid requirements we impose in the bankruptcy system. That would tend to make the effort reviewing time entries compensable or at the least, if we should allocate, make a material percentage of that effort compensable. But there are other factors to consider, which cut the other way and cause me ultimately to rule that not all of the time charges for this kind of work should be paid for by an estate.

The first is one argued by the fee examiner, that the time entries underlying any bill and not just a bill in a bankruptcy case, must still be reviewed as a matter of professional responsibility. I agree with that, though I think the necessary depth of review isn't the same.

But the second is a more basic one, implementing needs and concerns of the bankruptcy system. Lawyers providing services in a bankruptcy case should comply with the

timekeeping rules and guidelines, getting it right the first time. While mistakes and failures in compliance are foreseeable and perhaps inevitable, the issue isn't whether correcting them is necessary or appropriate, it's whether the estate should be pay for the necessary corrections. Of course corrections must be made, but if the lawyers or paralegals working on the matter don't do it right the first time, this consideration requires that the law firm and not the estate bear the expense of correcting what should have been done right in the first place.

As Judge Baldin (ph.) noted in CF&I, "If errors have been made, entries are incomplete or inconsistent with those of other professionals and time records require editing to comply with court standards, such editing services are clerical functions and not compensable even though they may be performed by a professional." We then need to put those countervailing considerations together to come up with an appropriate weighing that isn't arbitrary and is on a principled basis. The need to review to address privilege and confidentiality concerns is, in my view, undebatable. And so is the need to take in to account the judge's later rulings or otherwise to adjust to refinements in the law. But while bankruptcy does indeed require checking for compliance with its more rigorous timekeeping requirements tending to make the incremental effort compensable, a material part of the underlying effort is required as a matter of

professional responsibility outside of bankruptcy as well as in it. And consistent with the case law, for example, I can't approve saddling an estate with the cost of correcting errors that could and should have been avoided in the first place.

Dealing with these concerns, which cut against each other, requires some kind of allocation, analogous, analytically, to what we do with compensation for nonworking travel time in bankruptcy, where the professional on the plane is unavailable to work on other matters yet is not doing anything that directly benefits the client. And where, as a consequence, we provide that travel time be compensable at the rate of fifty percent. A similar approach is necessary here.

On balance, and recognizing that some of the work that was done in this category would be unique to bankruptcy, some of the work would be done for any client and that costs of fixing mistakes shouldn't be borne by the estate, I believe that under normal circumstances and going forward, an adjustment of fifty percent, five-zero percent, as we do with travel time, would be appropriate. But the law in this area has been evolving in increasing detail. And with increasing limitations and I think that it's unfair to the professionals to make them take a full hit in such am amount retroactively.

For this time period, recognizing that much of what I said is not new and could be inferred by, for example, by review of CF&I and SonicBlue, I think that a reduction of only

thirty-five percent for this kind of review during this time period would be appropriate, a percentage reduction that would apply to each of Weil, Kramer Levin and Butzel Long with respect to their respective services in this category.

But apart from the conceptual matter, there is in Weil's case an issue of excessive effort on the task. In comments that Weil did not dispute, the fee examiner observed that fifteen Weil timekeepers, almost all paralegals, billed 670 hours examining the time entries, which ran about 784 pages. The fee examiner further observed that to spend the amount of time that Weil timekeepers did in engaging in that time sheet review, one would have to look at each page of the time and expense entries for more than fifty, five - zero, minutes. This, too, Weil did not dispute. Weil states that this amounts to a "mathematical formulaic approach" contending that such is neither appropriate nor applicable.

But any analysis must start with the facts with respect to which attention to the math is inescapable. As a general rule, I leave parties with the better knowledge of what is necessary and goes on behind the scenes to determine whether a task, while appropriate to be performed, took too much time to do. But there are some matters where the time spent is so plainly inappropriate that it cries out for judicial control. This is one such matter. An additional reduction of fifteen percent must be made for this reason, which fifteen percent

adjustment might even be insufficient if I weren't already taking off thirty-five percent by reason of the discussion above.

Without suggesting a breakdown as a consequence of this positions on the two conceptual issues, underlying this disputed area with respect to Weil, the fee examiner seeks a reduction of fifty percent, five - zero percent, of the Weil time spent in this area. For the reasons discussed above, the fee examiner's request is granted.

The fee examiner also objects to the time charged for a Weil paralegal for alleged violation of the rules requiring booking of time in increments of a tenth of an hour. The fee examiner observes that fifty-three percent of the paralegal's time entries happen to be in increments of exact hours or half hours and argues that this is strong evidence of a disregard of the rules. I agree. Anyone with a knowledge of probability would understand that if the time entries were genuinely random, they'd be in increments of half an hour, that is exactly one hour or one half hour, only two times out of ten or twenty percent of the time. I'd of course tolerate some variance from that, especially with a modest sample size but here, in a sample that's quite large, almost 300 time entries, the half hour increments are more than two and half times the expected frequency.

In the absence of any affidavit explaining the reasons

for this statistically improbable occurrence, I must conclude and I now find that the paralegal gave insufficient attention to the requirements for billing in tenth of an hour increments. The fee examiner seeks a reduction in the fee request to the extent of ten percent of the paralegal's time. That is very reasonable under the circumstances. The objection is sustained.

The fee examiner also expresses concerns as to the time of a paralegal who made twelve entries, totaling twenty-three hours to "research" that a "proposed order" was pending. The order in question was on a motion to dismiss the appeal from the 363 sale approval order that was then pending in the District Court where an application to stay the 363 sale had earlier been denied. After the facts became known, it appeared that much of the time was for nonworking travel. While initially proposed in what I'd understand to be a kind of compromise offer, a seventy-five percent downward adjustment of that time to correspond to the nonworking travel rate, but the fee examiner considered a greater downward adjustment to be appropriate, suggesting that the order could have been checked electronically without travel or alternatively, absorbed as overhead.

While I'd agree that when a docket can be checked electronically, more expensive means of checking it should generally not be compensable, I don't find that general rule to

be relevant here, when I combine my knowledge of this case with my knowledge of the ways of the District Court. A review of the time entries shows that the paralegal was sent to check the District Court's M-47 docket, which is well known to bankruptcy judges. The M-47 docket isn't a regular docket. The M stands for Miscellaneous and it's a special docket where documents of many different types are to be found, including, as relevant here, matters that began with emergency stay applications. The M-47 docket isn't individual to a particular case and the docket contains entries for hundreds of different cases, if not more. And this single docket has been used for filing all of the documents in all of those cases for years. Unlike most dockets at the District Court, it can't be checked electronically. And neither judges nor, to my knowledge, attorneys get electronic notifications of orders granting or denying stays or of other filings on the M-47 docket.

That's a fact we bankruptcy judges have been painfully aware of for many years. Also, when a matter starts on the M-47 docket, as it does when the first filing at the District Court is a stay application, it can remain there for a while even when different things, such as the motion to dismiss the appeal that was also pending in the District Court and ultimately considered by different judges, are later filed there.

We also have to remember that the 363 order was the

single most important order I entered in the case and its implementation was a matter involving literally billions of dollars. So I well understand why Weil would do whatever it took to know what was happening at the District Court with respect to it. Sending a paralegal to the District Court on a matter of this type was entirely reasonable. If I were still a lawyer and the partner in charge of this matter, I would have done exactly the same thing.

With that said, it was appropriate if not essential for Weil to not only to make an adjustment for nonworking travel time, but to record its time accurately. I'm more than a little concerned, to put it mildly, that every one of the twelve time entries was in increments of a half hour and that ten of the twelve were for exactly two hours. That can't be a coincidence. Those entries were, at the least, not compliant with the time increment rules and they scream out for an inference that the time recorded was arbitrary, if not also padded. Those entries exemplify how not to record time. I'm disallowing all twelve of those entries, not because the work was unnecessary, but because of the particular circumstances I just described and because young lawyers and especially legal assistants, paraprofessionals, must understand that disregard of the rules has consequences. If there are further instances of this kind of timekeeping, I'll likewise disallow all of each offending lawyer's or paralegal's recorded time.

The fee examiner also objects to the compensation for time documented by a number of time entries that are said to be excessively vague or general, especially with respect to responding to e-mails. While response that in considering objections of that character, we have to be practical and that, given the task to be performed and especially the volume of the e-mails in question, the detail in the time entries was reasonable. With respect to Weil's point that we have to practical in looking at issues of this character, I agree. Anyone with any knowledge of what it takes to be counsel for a debtor in a large Chapter 11 case, knows how one has to run from task to task to deal with issues that can come up literally from minute to minute. And recording the time associated with that, while essential, must nevertheless be performed in a way that gives due account to the underlying responsibilities to be performed and the fact that those underlying responsibilities ultimately are more important than incremental detail in timekeeping.

That isn't an excuse for not recording the time or doing so contemporaneously, but it can and should inform the discretion of those like fee examiners and fee committees, the U.S. Trustee and judges who might otherwise complain about the level of detail. When a task goes on for a while, there's no reason why the normal level of detail can't be provided. But when events are very short and there are several within a small

time increment, or when things are going crazy, there's room in the bankruptcy system to look at the matter with some common sense.

As the fee examiner appropriately recognizes, "some leeway may well be appropriate in describing numerous tasks taking a short period of time." He goes on to say, however, that alleged failures to provide appropriate detail principally on tasks that took longer periods of time, were present here beyond that. For the most part, however, I find that the level of detail was satisfactory, especially when we look at it in the context of the length of the matters then described. The questioned area has generally involved descriptions of the general subject matter on legal research which for the most part was satisfactory and would be satisfactory under any circumstances. Though some of these description involve subject matters that, by their nature, could apply to many different things such as "estimation of claims," "tax issues". Another challenged series of descriptions involve "follow-up", which, when coupled with a description of what was being followed up, would not be a model of best practices, but would not be materially deficient.

The fee examiner seeks a downward adjustment of fifteen, one - five, percent of the challenged time in this area. As a general matter, describing the subject matter of research should be sufficient. But when the area researched is

inherently broad, greater detail is appropriate and greater detail could have provided, in some of the areas researched here, including, by way of example, research on "tax issues." However, this issue interlocks of course with the privilege and confidentiality concerns I discussed above and I'm not of a mind to impose a hard and fast rule requiring more detail in descriptions of potentially privileged or confidential matter, if the price of imposing that rule is a hit to creditors for the incremental cost of reviewing and redacting the resulting time entries. Finding as a fact that the detail was for the most part satisfactory but that more than a few areas more detail should have been provided, I direct a reduction of eight percent.

The fee examiner also objects to disbursements by Weil for its reimbursement of late night cabs, noting that in my rulings on the first round of fee apps, I had disapproved reimbursement for such after the closing of GM's Section 363 sale. Though I may share a responsibility for the misunderstanding, that miscomprehends my ruling. I so ruled then, merely on the basis of my understanding that there was then a calm after the storm, making the need for late night cabs go away. As I noted in my rulings back on April 29, very few people in New York travel to work by car and this very few of those working in New York have the luxury of going home late at night with their own cars. It's at least reasonable, if not

essential, for firms to pay the cost of their personnel's transportation home by cab or car service as an alternative to making those personnel take the subway or commuter trains late at night, or worse still, in the middle of the night assuming that the trains are still running at that hour.

So the issue is whether the firm can be reimbursed for its own reimbursement or initial payment of those costs or whether the firm must absorb those costs as overhead. I think that the answer to that is easy at the two extremes, where a lawyer or paralegal for a debtor or official committee has worked a very long day for that single client, charging the estate is hardly inappropriate. Conversely, if the late effort or the time worked for the debtor or the committee has been minimal, I'm uncomfortable with the estate being tagged with the expense even though somebody should bear the cost of covering the employee's late cab.

Which side of the divide that you come out on in the gray areas, when several clients are worked for during the day or a lesser number of hours but more than a few has been worked on matters relating to the estate is another of the areas that we refer to as a "head-scratcher" in oral argument. Any hard and fast rule could legitimately be criticized as arbitrary and imposing no standards or rule at all would be an invitation to bickering.

But I must say that I thought that Weil's proposal for

what amounts to a safe harbor, if six hours or more were worked, was quite sensible. If the total work has been done, which will be apparent from the time sheets, I think it's reasonable to assume that by reason of lawyers and paralegals basic professionalism and the serious consequences if there ever were an abuse, the estate will rarely get a raw deal. But parties could nevertheless present actual facts and I'd nevertheless disallow reimbursement in a heartbeat, notwithstanding the six hours worked, if the facts revealed any kind of abuse. And conversely, I'd nevertheless permit compensation even in a case of lesser total work if the facts revealed any special circumstances such as a crisis that arose late in the day. You can and should compute the appropriate reimbursement for the local transportation requests under these more fully articulated standards.

Finally, with respect to Weil, I've disallowed fees and expenses, reimbursements here, but lest my comments be taken out of context, I should note that the aspects of Weil's fee requests that were questioned by the fee examiner were quite a small percentage of Weil's aggregate request and that Weil made a fair number of adjustments in its request in the form of reductions after mistakes were called to its attention or another response to fee examiner concerns.

Like most judges, I here dealt only with those matters requiring judicial analysis or where commenting on particular

practices required explicit discussion. While I've made reductions in furtherance of my responsibility to GM's stakeholders to ensure that the professional fees are reasonable and appropriate, I fully recognize Weil's very major efforts on this case.

Turning now to Kramer Levin, you'll notice the similarity in several of the issues here with those I previously addressed in connection with Weil. And I won't repeat that discussion here. I'm satisfied with the consensual adjustments Kramer Levin proposed to moot particular issues where the fee examiner did not ask me to do more. And other adjustments sought by the fee examiner fall within the parameters of the adjustments I'd require under general principles applicable to lawyers generally that I described above in the Weil ruling such as those relating to "billing and retention matters" where the fee examiner seeks a reduction of fifteen percent, one-five percent, which I'll grant without further discussion. So I'll limit my discussion to differences that remain.

The biggest matter in dispute with respect to Kramer Levin's fee app in both percentage and absolute terms relates to alleged repetitive and uninformative time entries including matters described as "Attention to" staffing and project allocation, review correspondence re case, e-mails regarding case administration issues, attention to case administration,

calls to creditors regarding the status of the case, attention to environmental issues for remaining properties, attention to insurance issues and attention to plan structure issues. In many respects, the fee examiner's objections here are well taken though the fact-specific issues with a lot of these entries and the fact that, as I noted above, we must be practical require a more nuanced analysis.

As I noted in oral argument, task descriptions beginning with "Attention to" are like chalk on a blackboard to me, principally because of the inherent vagueness of that term, how uninformative it is and how it could cover such a wide spectrum of different levels of concentration and effort and resulting benefit to the estate. The fee examiner argues that "The repeated use of the same vague time description on a nearly daily basis raises questions about the necessity of the services provided." I do have concerns in this area but would state my concerns differently. Entries of that character raise threshold issues as to just what was done. However, one articulates the concerns, such time entries are indeed, as the fee examiner argues, uninformative, to say the least.

Repetitive time entries can nevertheless be appropriate if the underlying work was really that repetitive. But professional work, at least at the lawyer and especially partner level, will rarely be so repetitive that it can fairly be described with identical descriptions especially with such

frequency. They are a red flag to anyone reviewing the entries. Of course, Kramer Levin is right when it says that the guidelines don't require professionals to be "creative" in their time entries, but the guidelines in case law do require time entries to be minimally descriptive. Once more, I share the fee examiner's concerns.

So I hope and expect that I'll never see time entries of this type again. But the issue now is the extent to which Kramer Levin's fee entitlement should be decreased on this ground since I assume, in the absence of any evidentiary or even rhetorical suggestion to the contrary, that real work was indeed done. In large Chapter 11 cases, it's important, for example, to put in the necessary effort or to put in the effort necessary to coordinate the efforts of large teams. For cost to the estate in terms of duplication or, worse, balls falling between the outfielders would be far more than the cost of the coordination or especially any incremental cost of imprecisely described time. Phone calls have to be answered even if they're imperfectly documented. And here, as before, we have to be practical and recognize what can go on in a large active Chapter 11 case.

The fee examiner asked for a very major reduction and allowance here, fifty, five-zero, percent. As my earlier comments make clear, I find the time entries in question to be hardly a model for other lawyers to emulate. And I continue to

feel, as I've stated repeatedly, that failures to comply with required billing practices must have consequences. But I think that a fifty percent reduction is excessive as I think it's probably that the deficiencies are in timekeeping practices rather than doing the work. I will impose a twenty-five percent reduction here.

Again, with respect to this time period, I have objections by the fee examiner to allegedly vague time entries with a requested reduction of fifteen, one-five, percent of the value of the allegedly vaguely described time. For the most part, these are communications where the parties to communications or the subject matter were not fully described. Kramer Levin supplied additional information with respect to the specifics of those communications, but I can't tell from the parties' submissions on this dispute whether it did so with respect to all of the challenged time entries.

The objection flags failures to fully comply with the U.S. trustee guidelines, a matter that even if cured was cured very late. But the combination of the supplementation and the original entries is sufficient to give me confidence that the work really was done. The issue here isn't so much one of protecting the estate but of encouraging full compliance with the applicable requirements. I note that these time entries were prepared before I issued my ruling with respect to the prior round of fee apps which gave professionals further

guidance in this area. Because I believe that failures to comply should have some consequences but because I believe that the work actually was done, I'll direct a reduction of ten percent.

The fee examiner also objects to compensation in full with respect to time entries evidencing alleged block billing and seeks a fifteen percent reduction as a consequence of the alleged violations here. Kramer Levin provided supplementation to "unblock" certain entries though its ability accurately to do so, after the fact, is questioned by the fee examiner. And in some cases, principally with respect to research and drafting, Kramer Levin contended that applicable rules against block billing weren't violated at all because the work was a single task. They proposed a five percent reduction with respect to the disputed entries in this category to settle complaints as to its practices in this regard.

What constitutes a single task is debated by the parties. But like so many other thing I've been asked to deal with today, it's clear only at the extremes. I agree with Kramer Levin that reviewing precedent cases as part of "Attention to" an asbestos claim motion is sufficiently distinct, but I agree with the fee examiner that research and drafting are separate issues at least if "research" is defined as finding all of the applicable authorities. And I also agree with the fee examiner that compliance with the block billing

rules allows the fee reviewer to evaluate staffing decisions and effort expended.

But as the fee examiner also acknowledges, there are some activities that are so fluid they can't be reasonably broken out into their component parts. And the debate as to particular services and their related time entries underscores the difficulty in clearly drawing the line. I'm not of a mind to penalize lawyers for differences in opinion with respect to the gray areas because I don't think that Kramer Levin's block billing deficiencies are as bad as the fee examiner says they are. The adjustment in this area will be not the recommended fifteen percent but rather eight percent.

Finally, I note that of the Kramer Levin adjustments that I'm requiring, some are more and some are less, in percentage terms, than those I directed for those particular categories of deficiencies last time. That's a function of the particular failures that I encountered in each time period and the differences and pressures in the case in the two time periods.

Finally, I have a fee examiner objection to late night travel. The standards and safe harbor that I articulated with respect to Weil will apply here as well.

Turning next to the fee application of creditors' committee special counsel, Butzel Long, the fee examiner objects to the Butzel Long time spent on compensation matters.

Noting that approximately sixteen percent of Butzel Long's billed hours related to fee applications, the fee examiner contends that such was excessive and he seeks to disallow compensation for that to the extent it exceeds four percent.

In support of the low four percent cap, the fee examiner's counsel says that "A one percent cap for compensation and ongoing billing matters has been suggested" in the Lehman case. But what he did not say, though he should have, was who suggested it and that it was not a judicial ruling. Such a cap was suggested by a fee committee there, his counterpart in that case. And such a cap was not, so far as the record here reflects, ever judicially determined to be appropriate.

The problem here arises, as it did with respect to the first fee period, because Butzel Long's services, while they're likely to be substantial, ramped up in a fashion so its services in the earliest two fee periods, one of which is now before me, were modest. As I know from my management of the nonfee-related matters on my watch, Butzel Long is now in the middle of a briefing schedule on cross-motions for summary judgment that could have a 1.5 billion dollar effect on the unencumbered assets available to unsecured creditors here. While the briefs haven't yet been filed with me and, of course, I have no view as to the underlying merits of the controversy, I'm aware of its general parameters. And it's obvious to

anyone that this is a very major matter. If the time spent on compensation matters had occurred in the present fee period rather than its predecessor, I would have been surprised if the same objection had even been raised.

In any event, as we discussed in oral argument, the issue here is analytically no different than the one I ruled on with respect to the first period when Butzel Long sought compensation for the costs of its getting retained in the first place. I ruled then, in substance, that as the cost of getting retained was a requirement of the bankruptcy system, it is compensable to the extent it is not otherwise inappropriate on grounds of reasonableness or other factors.

That's equally true with respect to the costs of fee applications. Once more I suggest to the bankruptcy community that if the cost of what the bankruptcy system requires of professionals are material to them, they consider those costs before professionals are hired. Of course, when counsel was hired to prosecute a 1.5 billion dollar action it hardly surprises me when I see that the creditors' committee considered the administrative costs of fee review not to be material.

Accordingly, I must decline to impose any automatic cap, which by its nature must be arbitrary, of one percent or four percent or any other number based on the remainder of the fee application. Rather, Butzel Long's fees in this area

should be found to be appropriate to the extent -- though only the extent -- that they're reasonable under the traditional factors considered in fee applications generally. The Butzel Long fees for doing tasks other than securing judicial approval of its fees are not relevant to its request for compensation in this area, but its fees within this task obviously are.

In that connection, I note the comments I made at the outset of this ruling with respect to Weil. There are services that were engaged in, that related in varying degrees, to the fee application process that are appropriate for compensation from the estate. There are also others that are not. Butzel Long's requested fees in this area are appropriate for allowance in light of the standards I articulated above. Considering, by way of example, the extent to which they were for tasks that would be performed anyway, for a non-bankruptcy client, the extent to which it would be necessary or appropriate for confidentiality screening with respect to the creditors' committee's battle against its secured lenders, or in any other matters, and the extent to which the Butzel Long efforts were reasonable, on the one hand, or excessive, on the other. But as I noted, and for the avoidance of doubt, the time Butzel Long spent in other categories for its services don't bear on the compensability of this component.

In the Weil case, I determined that before taking into account a fifteen percent reduction for excessive effort in the

fee application process, a thirty-five percent reduction was appropriate. Since here there is no suggestion that Butzel Long spent excessive effort on its fee application process, a reduction of fifteen percent alone is the only adjustment that's necessary. So for the same reasons I discussed before, Butzel Long's fee request for application matters will likewise be reduced by thirty-five percent. It will otherwise be allowed.

Before concluding this area, I need to reiterate something I said the very -- said the first time we addressed fee applications in this case. The amounts sought are still quite large by reason of the needs as to work to be done in this case, one of the largest in American history. The task for a judge in my shoes is to balance the need to compensate lawyers and others fairly for the considerable work they did while at the same time ensuring that the estate gets its money's worth for the fees charged and that there be consequences for failures to comply with the applicable rules. As this very lengthy discussion indicates, I've tried very hard to achieve the appropriate balance.

For the foregoing reasons, the fee examiner's objections are sustained in part and overruled in part. I'm not going to micromanage the further proceedings by getting involved in individual time entries. You're to apply the rulings and principles I articulated to the fee apps involved

and agree on the fees that are payable in accordance with those rulings. If you somehow can't agree, we can address any issues by conference call. Except as disallowed as a consequence of my rulings described above, the professionals can and should be paid up to the level of the U.S. trustee holdback that I'll turn to next.

Then, as before, the US Trustee requests a ten percent deferral of payment or "holdback" of fees. The US Trustee's request is granted for the same reason I granted a similar request last time. I see no need to repeat that discussion now. Also as before, however, this ruling is without prejudice to a request that I reduce the holdback to five percent when the issues remaining to be resolved for a plan are settled or judicially resolved.

Last time, I spoke of the need to address environmental issues; the only issue that I then thought of is material in that context. Now I'm also more aware of the need to address asbestos issues. I can't tell how material they are or whether in the scheme of things they could actually block or slow confirmation.

If counsel for the debtors and the creditors' committee would like me to further reduce the holdback, they can simply advise me as to what's left to be done when they make any such request. As before, I'll reduce the holdback to zero percent when the debtors have resolved all material issues

and have filed a plan with creditors' committee support.

Lastly, the fee examiner asked me to extend the retention and employment of its consultant, Stuart Maue Associates (sic), which helps the fee examiner review the fees data. Noting that this case is no longer all that different from most Chapter 11 cases, or most large ones at least, the debtors oppose an extension at this time requesting that there be a further showing that the costs of the Maue firm's services are worth the money. But the fee examiner contends without any significant discussion of the cost-benefit ratio that the Maue services are worth the cost and that irrespective of the cost they're worth it as a prophylactic matter.

It should be obvious from my rulings last time and now that I've regarded the professionals' fees overwhelmingly to be fair. But it's also true, as the fee examiner has argued, that this is a high-profile case and one where American taxpayers, as well as creditors, have a strong interest.

Data analysis assistant to the fee examiner has proved to be useful so far though, ironically, the data analysis assistance is itself expensive and has cost the estate 197,000 dollars in fees that I've already approved and another 230,000 dollars that is before me on an unopposed basis today. Thus, I will not continue Maue indefinitely. I will continue Maue for one more fee period and will hear argument after that, if the fee examiner still wants Maue, why I shouldn't then bring

Maue's services to an end.

The fee examiner has asserted generally that Maue is worth the cost, though he hasn't argued that by reason of anything that one would regard as a traditional cost-benefit analysis. I haven't been given exact figures on the fees the Maue efforts saved and even if I had been presented with figures as to the total fees I disallowed, it would be difficult, if not impossible, to separate those that resulted from Maue efforts from those that resulted from the efforts of the fee examiner or, for that matter, the professionals themselves when the fee examiners called errors to the professionals' attention.

The fee examiner, saying "trust but verify", argues that apart from fees and disbursements disallowed I should consider the prophylactic effect of having someone looking at the fees. But having a fee examiner in the case already accomplishes that. And before adding a second entity to do that -- that is Maue as the desired numbers cruncher, I think that it's plainly appropriate, if not essential, to consider the cost for that second entity.

I agree that the case has been evolving into one more like the Chapter 11 cases that while very large, are not extraordinary by large Chapter 11 case standards. As the professionals' level of activity is decreasing, as is the number and size of the fee applications objections, Maue's

importance is decreasing as well and will soon be at the point, if we're not there already, where Maue's not worth the cost.

The underlying goal, as I've said many times, is to get more money into the pockets of creditors. And I think it's essential, then, as the debtors argue, that we approach this retention, like other retentions, with a cost-benefit analysis. Some unusually important matters are still on the professionals' plates: the environmental issues, the asbestos issues and the Butzel Long litigation. Work in each of those areas is now underway. And while the matter is close, I think the fees associated with getting the work done in those areas are high enough to continue the Maue support for the fee examiner for an additional fee period.

But while I have no reason to believe that the underlying issues will wholly go away within only one more time period -- or one more time period relating to fees, this case will by then evolve, if it's not there already, into a case that's no longer extraordinary by large Chapter 11 standards and that Maue's services will thus, and at that time, become an unnecessary expense.

Thus, perhaps in an excess of caution, I'll authorize retention of Maue for one more fee period. There will then be a species of rebuttable presumption that Maue's services will then come to an end. This ruling isn't with prejudice to a request to continue Maue further, but if any further request is

made, I'll need comfort that Maue is worth the cost before I'll approve its retention beyond that time.

Folks, you are to caucus amongst yourself to compute the amounts that are due consistent with my rulings. I would then ask the debtors to settle one or more orders implementing all of the rulings that I've set forth today and authorizing and directing the expenditure of any incremental amounts necessary to provide compensation to the professionals to the extent that the interim fees have been awarded under this opinion.

Not by way of re-argument, are there any open issues or ambiguities in what I described this afternoon?

I hear none. Then we're adjourned. Have a good day.

(Proceedings concluded at 3:43 p.m.)

I N D E X

R U L I N G S

C E R T I F I C A T I O N

I, Sara Bernstein, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sara Bernstein
Digitally signed by Sara Bernstein
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Date: July 7, 2010

Date:_____